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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,586	12/21/2004	Kazushige Moriyama	263494US0PCT	7701
22850	7590	11/28/2006		
C. IRVIN MCCLELLAND OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER DIRAMIO, JACQUELINE A	
			ART UNIT	PAPER NUMBER
			1641	

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/518,586

Applicant(s)

MORIYAMA ET AL.

Examiner

Jacqueline DiRamio

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment; affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: All of Record.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


LONG V. LE 11/21/06
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 3. NOTE: The proposed amendments to claim 16 raise new issues, possibly under 35 U.S.C. 112, that would require further consideration and a possible new search.

Continuation of 11. does NOT place the application in condition for allowance because: of the reasons presented in the previous office action. Applicant argues that the secondary reference of Akhaven-Tafti et al., which is used in the 103(a) rejection as motivation for the addition of a reducing agent to the chemiluminescence enhancer of Bronstein et al., does not provide correct motivation to be combined with the primary reference of Bronstein et al. because Akhaven-Tafti et al. employ different reagents and use certain components for different reasons (p5-9). This argument is not found persuasive because although the chemiluminescence substrate of Akhaven-Tafti differs from Applicant's substrate of dioxetane, the primary reference of Bronstein et al. does teach dioxetane as the chemiluminescence substrate, as well as the other limitations required for the chemiluminescence enhancer. The reference of Bronstein et al. is only missing the limitation of adding an oxidizing or reducing agent to the enhancer, wherein this deficiency is overcome through the combination with Akhaven-Tafti et al., wherein Akhaven-Tafti et al. teach the benefit of adding a reducing agent, in the form of sulfite salt, to a chemiluminescence enhancer in order to prevent the accumulation of background chemiluminescence over a period of time. Therefore, although Applicant used an oxidizing or reducing agent, also in the form of a sulfite salt, in their method for chemiluminescence for a different reason, Akhaven-Tafti et al. teach a strong and applicable motivation for utilizing a reducing agent with a method of chemiluminescence, and thus, the rejection of the claims under 35 U.S.C. 103(a) as being unpatentable over Bronstein et al. in view of Akhaven-Tafti et al. is upheld.